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U.S. v. Daniel Karron
07 Cr. 541 (RPP)

JURY CHARGE

INTRODUCTION

MEMBERS OF THE JURY, WE ARE NOW AT THAT STAGE OF THE TRIAL WHERE YOU WILL SOON UNDERTAKE YOUR FINAL FUNCTION AS JURORS. I KNOW YOU WILL TRY THE ISSUES THAT HAVE BEEN PRESENTED TO YOU ACCORDING TO THE OATH WHICH YOU HAVE TAKEN AS JURORS IN WHICH YOU PROMISED THAT YOU WILL WELL AND TRULY TRY THE ISSUES IN THIS CASE AND RENDER A TRUE VERDICT. IF YOU FOLLOW THAT OATH AND TRY THE ISSUES WITHOUT FEAR OR PREJUDICE OR BIAS OR SYMPATHY, YOU WILL ARRIVE AT A TRUE AND JUST VERDICT.

THE GOVERNMENT AS A PARTY

THE FACT THAT THE PROSECUTION IS BROUGHT IN THE NAME OF THE UNITED STATES OF AMERICA ENTITLES THE GOVERNMENT TO NO GREATER CONSIDERATION THAN THAT ACCORDED TO ANY OTHER PARTY TO A LITIGATION. BY THE SAME TOKEN, IT IS ENTITLED TO NO LESS CONSIDERATION. ALL PARTIES, WHETHER GOVERNMENT OR INDIVIDUALS, STAND AS EQUALS AT THE BAR OF JUSTICE.

ROLE OF THE COURT

YOU HAVE NOW HEARD ALL OF THE EVIDENCE IN THE CASE AS WELL AS THE FINAL ARGUMENTS OF THE LAWYERS FOR THE PARTIES.

MY DUTY AT THIS POINT IS TO INSTRUCT YOU AS TO THE LAW. IT IS YOUR DUTY TO ACCEPT THESE INSTRUCTIONS OF LAW AND APPLY THEM TO THE FACTS AS YOU WILL DETERMINE THEM, JUST AS IT HAS BEEN MY DUTY TO PRESIDE OVER THE TRIAL AND DECIDE WHAT TESTIMONY AND EVIDENCE IS RELEVANT UNDER THE LAW FOR YOUR CONSIDERATION.

ON THESE LEGAL MATTERS, YOU MUST TAKE THE LAW AS I GIVE IT TO YOU. IF ANY ATTORNEY HAS STATED A LEGAL PRINCIPLE DIFFERENT FROM ANY THAT I STATE TO YOU IN MY INSTRUCTIONS, IT IS MY INSTRUCTIONS THAT YOU MUST FOLLOW.

YOU SHOULD NOT SINGLE OUT ANY INSTRUCTION AS ALONE STATING THE LAW, BUT YOU SHOULD CONSIDER MY INSTRUCTIONS AS A WHOLE WHEN YOU RETIRE TO DELIBERATE IN THE JURY ROOM.

YOU SHOULD NOT, ANY OF YOU, BE CONCERNED ABOUT THE WISDOM OF ANY RULE THAT I STATE. REGARDLESS OF ANY OPINION THAT YOU MAY HAVE AS TO WHAT THE LAW MAY BE -- OR OUGHT TO BE -- IT WOULD VIOLATE YOUR SWORN DUTY TO BASE A VERDICT UPON ANY OTHER VIEW OF THE LAW THAN THAT WHICH I GIVE YOU.

NOW, AFTER LISTENING TO MY INSTRUCTIONS ABOUT THE LAW, YOU WILL THEN DETERMINE HOW THIS CASE SHOULD BE DECIDED.

ROLE OF THE JURY (EVIDENCE AND NON-EVIDENCE)

AS I HAVE SAID, THE MEMBERS OF THE JURY ARE THE SOLE AND EXCLUSIVE JUDGES OF THE FACTS. YOU DECIDE BASED UPON THE WEIGHT OF THE EVIDENCE; YOU DETERMINE THE CREDIBILITY OF THE WITNESSES; YOU RESOLVE SUCH CONFLICTS AS THERE MAY BE IN THE TESTIMONY, AND YOU DRAW WHATEVER REASONABLE INFERENCES YOU DECIDE TO DRAW FROM THE FACTS AS YOU WILL DETERMINE THEM.

IN DETERMINING THE FACTS, YOU MUST RELY UPON YOUR OWN RECOLLECTION OF THE EVIDENCE. WHAT THE LAWYERS HAVE SAID IN THEIR OPENING STATEMENTS, IN THEIR CLOSING ARGUMENTS, IN THEIR OBJECTIONS, OR IN THEIR QUESTIONS IS NOT EVIDENCE. IN THIS CONNECTION, YOU SHOULD BEAR IN MIND THAT A QUESTION PUT TO A WITNESS IS NEVER EVIDENCE. IT IS ONLY THE ANSWER WHICH IS EVIDENCE. QUESTIONS ARE RELEVANT ONLY TO THE EXTENT THEY ENABLE YOU TO UNDERSTAND THE ANSWER. NOR IS ANYTHING I MAY HAVE SAID DURING THE TRIAL OR SUMMATIONS OR MAY SAY DURING THESE INSTRUCTIONS WITH RESPECT TO A FACT MATTER TO BE TAKEN IN SUBSTITUTION FOR YOUR OWN INDEPENDENT RECOLLECTION. WHAT I SAY IS NOT EVIDENCE.

THE EVIDENCE BEFORE YOU CONSISTS OF THE ANSWERS GIVEN BY THE WITNESSES -- THE SWORN TESTIMONY THAT THEY GAVE FROM THE STAND, AS YOU RECALL IT -- AND THE EXHIBITS THAT WERE RECEIVED IN EVIDENCE.

YOU HAVE HEARD EVIDENCE IN THE FORM OF STIPULATIONS THAT CONTAIN FACTS THAT WERE AGREED TO BE TRUE. YOU MUST ACCEPT THE FACTS IN THOSE STIPULATIONS AS TRUE.

THE EVIDENCE DOES NOT INCLUDE QUESTIONS. ONLY THE ANSWERS ARE EVIDENCE. BUT YOU MAY NOT CONSIDER ANY ANSWER THAT I DIRECTED YOU TO DISREGARD OR THAT I DIRECTED STRUCK FROM THE RECORD. DO NOT CONSIDER SUCH ANSWERS.

SINCE YOU ARE THE SOLE AND EXCLUSIVE JUDGES OF THE FACTS, I HAVE NOT MEANT AND DO NOT MEAN BY MY WORDS OR ACTS TO INDICATE ANY OPINION AS TO THE FACTS OR WHAT YOUR VERDICT SHOULD BE. THE RULINGS THAT I HAVE MADE DURING THE TRIAL ARE NOT ANY INDICATION OF MY VIEWS OF WHAT YOUR DECISION SHOULD BE AS TO WHETHER OR NOT THE GUILT OF THE DEFENDANT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT.

I ALSO ASK YOU TO DRAW NO INFERENCE FROM THE FACT THAT UPON OCCASION I ASKED QUESTIONS OF CERTAIN WITNESSES. THESE QUESTIONS WERE ONLY INTENDED FOR CLARIFICATION OR TO EXPEDITE MATTERS AND CERTAINLY WERE NOT INTENDED TO SUGGEST ANY OPINIONS ON MY PART AS TO THE VERDICT YOU SHOULD RENDER OR WHETHER ANY OF THE WITNESSES MAY HAVE BEEN MORE CREDIBLE THAN ANY OTHER WITNESS. YOU ARE EXPRESSLY TO UNDERSTAND THAT THE COURT HAS NO OPINION AS TO THE VERDICT YOU SHOULD RENDER IN THIS CASE.

AS TO THE FACTS, LADIES AND GENTLEMEN, YOU ARE THE EXCLUSIVE JUDGES. YOU HAVE THE RESPONSIBILITY OF REVIEWING THE EVIDENCE, WEIGHING

THE CREDIBILITY OF THE WITNESSES, SEPARATING THE IMPORTANT FROM THE UNIMPORTANT, AND MAKING THE FACTUAL DETERMINATIONS WHICH BEAR ON THE GUILT OR LACK OF GUILT OF THE DEFENDANT. YOU ARE TO PERFORM THE DUTY OF FINDING THE FACTS WITHOUT BIAS OR PREJUDICE AS TO ANY PARTY.

CONDUCT OF COUNSEL

IT IS THE DUTY OF THE ATTORNEY FOR EACH SIDE OF A CASE TO OBJECT WHEN THE OTHER SIDE OFFERS TESTIMONY OR OTHER EVIDENCE WHICH THE ATTORNEY BELIEVES IS NOT PROPERLY ADMISSIBLE. COUNSEL ALSO HAVE THE RIGHT AND DUTY TO ASK THE COURT TO MAKE RULINGS OF LAW AND TO REQUEST CONFERENCES IN THE ROBING ROOM OR AT THE SIDE BAR, OUT OF THE HEARING OF THE JURY. ALL THOSE QUESTIONS OF LAW MUST BE DECIDED BY ME, THE COURT. YOU SHOULD NOT SHOW ANY PREJUDICE AGAINST ANY ATTORNEY OR HIS OR HER CLIENT BECAUSE THE ATTORNEY OBJECTED TO THE ADMISSIBILITY OF EVIDENCE, ASKED FOR A CONFERENCE OUT OF THE HEARING OF THE JURY, OR ASKED THE COURT FOR A RULING ON THE LAW.

AS I ALREADY INDICATED, MY RULINGS ON THE ADMISSIBILITY OF EVIDENCE DO NOT INDICATE ANY OPINION ABOUT THE WEIGHT OR EFFECT OF SUCH EVIDENCE. YOU ARE THE SOLE JUDGES OF THE CREDIBILITY OF ALL WITNESSES AND THE WEIGHT AND EFFECT OF ALL THE EVIDENCE.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

NOW, THERE ARE TWO TYPES OF EVIDENCE WHICH YOU MAY PROPERLY USE IN DECIDING WHETHER A DEFENDANT IS GUILTY OR NOT GUILTY.

ONE TYPE OF EVIDENCE IS CALLED DIRECT EVIDENCE. DIRECT EVIDENCE IS A WITNESS' TESTIMONY AS TO WHAT HE SAW, HEARD, OR OBSERVED. IN OTHER WORDS, WHEN A WITNESS TESTIFIES ABOUT WHAT IS KNOWN TO HIM OF HIS OWN KNOWLEDGE BY VIRTUE OF HIS OWN SENSES --WHAT HE SEES, FEELS, TOUCHES OR HEARS -- THAT IS CALLED DIRECT EVIDENCE.

CIRCUMSTANTIAL EVIDENCE IS EVIDENCE WHICH TENDS TO PROVE ONE FACT BY PROOF OF OTHER FACTS. THERE IS A SIMPLE EXAMPLE OF CIRCUMSTANTIAL EVIDENCE WHICH IS OFTEN USED IN THIS COURTHOUSE.

ASSUME THAT A WITNESS TESTIFIED THAT WHEN HE CAME INTO THE COURTHOUSE THIS MORNING, THE SUN WAS SHINING AND IT WAS A NICE DAY.

ASSUME HE TESTIFIED THAT SOMEONE WALKED INTO THE COURTROOM WITH AN UMBRELLA WHICH WAS DRIPPING WET, AND THAT SOMEBODY ELSE WALKED IN WITH A RAINCOAT WHICH WAS ALSO DRIPPING WET.

NOW, HE DOES NOT TESTIFY THAT HE LOOKED OUT OF THE COURTROOM AND SAW THAT IT WAS RAINING. SO THERE IS NO DIRECT EVIDENCE OF THAT FACT. BUT ON THE COMBINATION OF FACTS WHICH I HAVE ASKED YOU TO ASSUME, IT WOULD BE REASONABLE AND LOGICAL – IF YOU FOUND THE WITNESS'S TESTIMONY TO BE CREDIBLE – FOR YOU TO CONCLUDE THAT BETWEEN THE TIME HE TESTIFIED AND THE TIME THOSE PEOPLE WALKED IN, IT HAD STARTED TO RAIN.

THAT IS ALL THERE IS TO CIRCUMSTANTIAL EVIDENCE. YOU INFER ON THE BASIS OF REASON AND EXPERIENCE AND COMMON SENSE FROM AN ESTABLISHED FACT THE EXISTENCE OR THE NONEXISTENCE OF SOME OTHER FACT.

MANY FACTS, SUCH AS A PERSON'S STATE OF MIND, CAN RARELY BE PROVED BY DIRECT EVIDENCE.

CIRCUMSTANTIAL EVIDENCE IS OF NO LESS VALUE THAN DIRECT EVIDENCE; IT IS A GENERAL RULE THAT THE LAW MAKES NO DISTINCTION BETWEEN DIRECT AND CIRCUMSTANTIAL EVIDENCE, BUT SIMPLY REQUIRES THAT BEFORE CONVICTING THE DEFENDANT, THE JURY MUST BE SATISFIED THAT THE GOVERNMENT HAS PROVED THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT AFTER REVIEW OF ALL OF THE EVIDENCE IN THE CASE, DIRECT AND CIRCUMSTANTIAL.

DURING THE TRIAL YOU MAY HAVE HEARD THE ATTORNEYS USE THE TERM "INFERENCE" AND IN THEIR ARGUMENTS THEY HAVE ASKED YOU TO INFER, ON THE BASIS OF YOUR REASON, EXPERIENCE AND COMMON SENSE, FROM ONE OR MORE ESTABLISHED FACTS THE EXISTENCE OF SOME OTHER FACT.

AN INFERENCE IS NOT A SUSPICION OR A GUESS. IT IS A REASONED, LOGICAL DECISION TO CONCLUDE THAT A DISPUTED FACT EXISTS ON THE BASIS OF ANOTHER FACT THAT YOU KNOW EXISTS.

THERE ARE TIMES WHEN DIFFERENT INFERENCES MAY BE DRAWN FROM FACTS WHETHER BY DIRECT OR CIRCUMSTANTIAL EVIDENCE. THE GOVERNMENT MAY ASK YOU TO DRAW ONE SET OF INFERENCES, WHILE THE DEFENSE MAY ASK YOU TO DRAW ANOTHER. IT IS FOR YOU AND YOU ALONE TO DECIDE WHAT INFERENCES YOU WILL DRAW.

THE PROCESS OF DRAWING INFERENCES FROM FACTS IN EVIDENCE IS NOT A MATTER OF GUESSWORK OR SPECULATION. AN INFERENCE IS A DEDUCTION OR A CONCLUSION WHICH YOU, THE JURY, ARE PERMITTED TO DRAW - BUT NOT

REQUIRED TO DRAW - FROM THE FACTS WHICH YOU FIND TO BE PROVEN BY EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. IN DRAWING AN INFERENCE, YOU SHOULD EXERCISE YOUR COMMON SENSE.

SO WHILE YOU ARE CONSIDERING THE EVIDENCE PRESENTED TO YOU, YOU ARE PERMITTED TO DRAW, FROM THE FACTS WHICH YOU FIND TO BE PROVEN, SUCH REASONABLE INFERENCES AS WOULD BE JUSTIFIED IN THE LIGHT OF YOUR EXPERIENCE.

HERE, AGAIN, LET ME REMIND YOU THAT WHETHER BASED UPON DIRECT OR CIRCUMSTANTIAL EVIDENCE, OR UPON LOGICAL OR REASONABLE INFERENCES DRAWN FROM SUCH EVIDENCE, YOU MUST BE SATISFIED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU MAY CONVICT.

CREDIBILITY OF WITNESSES

NOW, HOW DO YOU EVALUATE THE CREDIBILITY OR BELIEVABILITY OF THE WITNESSES? YOU HAVE HAD AN OPPORTUNITY TO OBSERVE ALL OF THE WITNESSES. IT NOW IS YOUR JOB TO DECIDE HOW BELIEVABLE EACH WITNESS WAS IN HIS OR HER TESTIMONY. YOU ARE THE SOLE JUDGES OF THE CREDIBILITY OF EACH WITNESS AND OF THE IMPORTANCE OF HIS OR HER TESTIMONY.

IT MUST BE CLEAR TO YOU BY NOW THAT YOU ARE BEING CALLED UPON TO RESOLVE VARIOUS FACTUAL ISSUES UNDER THE INDICTMENT, IN THE FACE OF VERY DIFFERENT PICTURES PAINTED BY THE GOVERNMENT AND THE DEFENSE WHICH CANNOT BE RECONCILED. YOU WILL NOW HAVE TO DECIDE WHERE THE TRUTH LIES, AND AN IMPORTANT PART OF THAT DECISION WILL INVOLVE MAKING JUDGMENTS

ABOUT THE TESTIMONY OF THE WITNESSES YOU HAVE LISTENED TO AND OBSERVED. IN MAKING THOSE JUDGMENTS, YOU SHOULD CAREFULLY SCRUTINIZE ALL OF THE TESTIMONY OF EACH WITNESS, THE CIRCUMSTANCES UNDER WHICH EACH WITNESS TESTIFIED, AND ANY OTHER MATTER IN EVIDENCE WHICH MAY HELP YOU TO DECIDE THE TRUTH AND THE IMPORTANCE OF EACH WITNESS' TESTIMONY.

YOUR DECISION ON WHETHER OR NOT TO BELIEVE A WITNESS MAY DEPEND ON HOW THE WITNESS IMPRESSED YOU. WAS THE WITNESS CANDID, FRANK AND FORTHRIGHT? OR, DID THE WITNESS SEEM AS IF HE OR SHE WAS HIDING SOMETHING, OR BEING EVASIVE OR SUSPECT IN SOME WAY? HOW DID THE WAY THE WITNESS TESTIFIED ON DIRECT EXAMINATION COMPARE WITH HOW THE WITNESS TESTIFIED ON CROSS-EXAMINATION? WAS THE WITNESS CONSISTENT IN HIS OR HER TESTIMONY OR DID HE OR SHE CONTRADICT HIMSELF OR HERSELF? DID THE WITNESS APPEAR TO KNOW WHAT HE OR SHE WAS TALKING ABOUT AND DID THE WITNESS STRIKE YOU AS SOMEONE WHO WAS TRYING TO REPORT HIS OR HER KNOWLEDGE ACCURATELY?

HOW MUCH YOU CHOOSE TO BELIEVE A WITNESS MAY BE INFLUENCED BY THE WITNESS' BIAS. DOES THE WITNESS HAVE A RELATIONSHIP WITH THE GOVERNMENT OR THE DEFENDANT WHICH MAY AFFECT HOW HE OR SHE TESTIFIED? DOES THE WITNESS HAVE SOME INCENTIVE, LOYALTY OR MOTIVE THAT MIGHT CAUSE HIM OR HER TO SHADE THE TRUTH? OR DOES THE WITNESS HAVE SOME BIAS, PREJUDICE, OR HOSTILITY THAT MAY HAVE CAUSED THE WITNESS--CONSCIOUSLY OR NOT--TO GIVE YOU SOMETHING OTHER THAN A COMPLETELY ACCURATE ACCOUNT OF THE FACTS HE OR SHE TESTIFIED TO?

EVEN IF THE WITNESS WAS IMPARTIAL, YOU SHOULD CONSIDER WHETHER THE WITNESS HAD AN OPPORTUNITY TO OBSERVE THE FACTS HE OR SHE TESTIFIED ABOUT AND YOU SHOULD ALSO CONSIDER THE WITNESS' ABILITY TO EXPRESS HIMSELF OR HERSELF. ASK YOURSELVES WHETHER THE WITNESS' RECOLLECTION OF THE FACTS STANDS UP IN THE LIGHT OF ALL OTHER EVIDENCE.

IN OTHER WORDS, WHAT YOU MUST TRY TO DO IN DECIDING CREDIBILITY IS TO SIZE A PERSON UP IN LIGHT OF HIS OR HER DEMEANOR, THE EXPLANATIONS GIVEN, AND IN LIGHT OF ALL THE OTHER EVIDENCE IN THE CASE, JUST AS YOU WOULD DO IN ANY IMPORTANT MATTER WHERE YOU ARE TRYING TO DECIDE IF A PERSON IS TRUTHFUL, STRAIGHTFORWARD, AND ACCURATE IN HIS OR HER RECOLLECTION. IN DECIDING THE QUESTION OF CREDIBILITY, REMEMBER THAT YOU SHOULD USE YOUR COMMON SENSE, YOUR GOOD JUDGMENT, AND YOUR EXPERIENCE.

INTEREST IN OUTCOME

NOW, IN EVALUATING CREDIBILITY OF THE WITNESSES, YOU SHOULD TAKE INTO ACCOUNT ANY EVIDENCE THAT THE WITNESS WHO TESTIFIED MAY BENEFIT IN SOME WAY FROM THE OUTCOME OF THIS CASE. SUCH AN INTEREST IN THE OUTCOME CREATES A MOTIVE TO TESTIFY FALSELY AND MAY SWAY THE WITNESS TO TESTIFY IN A WAY THAT ADVANCES HIS OR HER OWN INTERESTS. THEREFORE, IF YOU FIND THAT ANY WITNESS WHOSE TESTIMONY YOU ARE CONSIDERING MAY HAVE AN INTEREST IN THE OUTCOME OF THIS TRIAL, THEN YOU SHOULD BEAR THAT

FACTOR IN MIND WHEN EVALUATING THE CREDIBILITY OF HIS OR HER TESTIMONY AND ACCEPT IT WITH GREAT CARE.

THIS IS NOT TO SUGGEST THAT EVERY WITNESS WHO HAS AN INTEREST IN THE OUTCOME OF A CASE WILL TESTIFY FALSELY. IT IS FOR YOU TO DECIDE TO WHAT EXTENT, IF AT ALL, THE WITNESS' INTEREST HAS AFFECTED OR COLORED HIS OR HER TESTIMONY.

GOVERNMENT EMPLOYEE WITNESS

YOU HAVE HEARD THE TESTIMONY OF GOVERNMENT EMPLOYEES. THE FACT THAT A WITNESS MAY BE A GOVERNMENT EMPLOYEE DOES NOT MEAN THAT HIS OR HER TESTIMONY IS NECESSARILY DESERVING OF MORE CONSIDERATION OR GREATER WEIGHT THAN THAT OF AN ORDINARY WITNESS. ALSO IT DOES NOT MEAN THAT HIS OR HER TESTIMONY IS NECESSARILY DESERVING OF LESS CONSIDERATION OR LESS WEIGHT THAN THAT OF AN ORDINARY WITNESS.

IT IS YOUR DECISION, AFTER REVIEWING ALL THE EVIDENCE, WHETHER TO ACCEPT THE TESTIMONY OF THE GOVERNMENT EMPLOYEE AND TO GIVE THAT TESTIMONY WHATEVER WEIGHT, IF ANY, YOU FIND IT DESERVES.

PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

THE DEFENDANT HAS PLEADED NOT GUILTY TO THE CHARGES IN THE INDICTMENT.

AS A RESULT OF THE DEFENDANT'S PLEAS OF NOT GUILTY, THE BURDEN IS ON THE PROSECUTION TO PROVE THE DEFENDANT IS GUILTY BEYOND A

REASONABLE DOUBT. THIS BURDEN NEVER SHIFTS TO THE DEFENDANT FOR THE SIMPLE REASON THAT THE LAW NEVER IMPOSES UPON THE DEFENDANT IN A CRIMINAL CASE THE BURDEN OR DUTY OF TESTIFYING, OR CALLING ANY WITNESSES OR LOCATING OR PRODUCING ANY EVIDENCE.

THE LAW PRESUMES THE DEFENDANT TO BE INNOCENT OF ALL THE CHARGES AGAINST HIM. I THEREFORE INSTRUCT YOU THAT THE DEFENDANT IS TO BE PRESUMED BY YOU TO BE INNOCENT THROUGHOUT YOUR DELIBERATIONS UNTIL SUCH TIME, IF IT EVER COMES, THAT YOU AS A JURY ARE SATISFIED THAT THE GOVERNMENT HAS PROVEN HIM GUILTY BEYOND A REASONABLE DOUBT.

THE DEFENDANT BEGAN THE TRIAL HERE WITH A CLEAN SLATE. THIS PRESUMPTION OF INNOCENCE ALONE IS SUFFICIENT TO ACQUIT THE DEFENDANT UNLESS YOU AS JURORS ARE UNANIMOUSLY CONVINCED BEYOND A REASONABLE DOUBT OF HIS GUILT, AFTER A CAREFUL AND IMPARTIAL CONSIDERATION OF ALL OF THE EVIDENCE IN THIS CASE. IF THE GOVERNMENT FAILS TO SUSTAIN ITS BURDEN, YOU MUST FIND THE DEFENDANT NOT GUILTY.

THIS PRESUMPTION WAS WITH THE DEFENDANT WHEN THE TRIAL BEGAN AND REMAINS WITH HIM EVEN NOW AS I SPEAK TO YOU AND WILL CONTINUE WITH THE DEFENDANT INTO YOUR DELIBERATIONS UNLESS AND UNTIL YOU ARE CONVINCED THAT THE GOVERNMENT HAS PROVEN HIS GUILT BEYOND A REASONABLE DOUBT.

DEFENDANT'S RIGHT NOT TO TESTIFY

THE DEFENDANT, DANIEL KARRON, DID NOT TESTIFY IN THIS CASE. UNDER OUR CONSTITUTION, A DEFENDANT HAS NO OBLIGATION TO TESTIFY OR TO PRESENT ANY EVIDENCE, BECAUSE IT IS THE GOVERNMENT'S BURDEN TO PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. THAT BURDEN REMAINS WITH THE GOVERNMENT THROUGHOUT THE ENTIRE TRIAL AND NEVER SHIFTS TO THE DEFENDANT. THE DEFENDANT IS NEVER REQUIRED TO PROVE THAT HE IS INNOCENT.

YOU MAY NOT ATTACH ANY SIGNIFICANCE TO THE FACT THAT THE DEFENDANT DID NOT TESTIFY. NO ADVERSE INFERENCE AGAINST HIM MAY BE DRAWN BY YOU BECAUSE HE DID NOT TAKE THE WITNESS STAND. YOU MAY NOT CONSIDER THIS AGAINST THE DEFENDANT IN ANY WAY IN YOUR DELIBERATIONS IN THE JURY ROOM.

REASONABLE DOUBT

I HAVE SAID THAT THE GOVERNMENT MUST PROVE THAT THE DEFENDANT IS GUILTY BEYOND A REASONABLE DOUBT. THE QUESTION NATURALLY IS, "WHAT IS A REASONABLE DOUBT?" THE WORDS ALMOST DEFINE THEMSELVES. IT IS A DOUBT BASED UPON REASON AND COMMON SENSE. IT IS A DOUBT THAT A REASONABLE PERSON HAS AFTER CAREFULLY WEIGHING ALL OF THE EVIDENCE. IT IS A DOUBT WHICH WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT IN A MATTER OF IMPORTANCE IN HIS OR HER PERSONAL LIFE. PROOF BEYOND A REASONABLE DOUBT MUST,

THEREFORE, BE PROOF OF SUCH A CONVINCING CHARACTER THAT A REASONABLE PERSON WOULD NOT HESITATE TO RELY AND ACT UPON IT IN THE MOST IMPORTANT OF HIS OWN AFFAIRS. A REASONABLE DOUBT IS NOT A CAPRICE OR WHIM; IT IS NOT A SPECULATION OR SUSPICION. IT IS NOT AN EXCUSE TO AVOID THE PERFORMANCE OF AN UNPLEASANT DUTY. AND IT IS NOT SYMPATHY.

IN A CRIMINAL CASE, THE BURDEN IS AT ALL TIMES UPON THE GOVERNMENT TO PROVE GUILT BEYOND A REASONABLE DOUBT. THE LAW DOES NOT REQUIRE THAT THE GOVERNMENT PROVE GUILT BEYOND ALL POSSIBLE DOUBT; PROOF BEYOND A REASONABLE DOUBT IS SUFFICIENT TO CONVICT. THIS BURDEN NEVER SHIFTS TO THE DEFENDANT, WHICH MEANS THAT IT IS ALWAYS THE GOVERNMENT'S BURDEN TO PROVE EACH OF THE ELEMENTS OF THE CRIMES CHARGED BEYOND A REASONABLE DOUBT.

IF, AFTER FAIR AND IMPARTIAL CONSIDERATION OF ALL OF THE EVIDENCE, YOU HAVE A REASONABLE DOUBT, IT IS YOUR DUTY TO ACQUIT THE DEFENDANT. ON THE OTHER HAND, IF AFTER FAIR AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE, YOU ARE SATISFIED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, YOU SHOULD VOTE TO CONVICT.

SYMPATHY

UNDER YOUR OATH AS JURORS YOU ARE NOT TO BE SWAYED BY SYMPATHY. YOU ARE TO BE GUIDED SOLELY BY THE EVIDENCE IN THIS CASE,

AND THE CRUCIAL, HARD-CORE QUESTION THAT YOU MUST ASK YOURSELVES AS YOU SIFT THROUGH THE EVIDENCE IS: HAS THE GOVERNMENT PROVEN THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT?

IT IS FOR YOU ALONE TO DECIDE WHETHER THE GOVERNMENT HAS PROVEN THAT THE DEFENDANT IS GUILTY OF THE CRIMES CHARGED SOLELY ON THE BASIS OF THE EVIDENCE AND SUBJECT TO THE LAW AS I CHARGE YOU. IT MUST BE CLEAR TO YOU THAT ONCE YOU LET FEAR OR PREJUDICE OR BIAS OR SYMPATHY INTERFERE WITH YOUR THINKING, THERE IS A RISK THAT YOU WILL NOT ARRIVE AT A TRUE AND JUST VERDICT.

IF YOU HAVE A REASONABLE DOUBT AS TO THE DEFENDANT'S GUILT, YOU SHOULD NOT HESITATE FOR ANY REASON TO FIND A VERDICT OF ACQUITTAL. BUT ON THE OTHER HAND, IF YOU SHOULD FIND THAT THE GOVERNMENT HAS MET ITS BURDEN OF PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, YOU SHOULD NOT HESITATE BECAUSE OF SYMPATHY OR ANY OTHER REASON TO RENDER A VERDICT OF GUILTY.

PUNISHMENT

THE QUESTION OF POSSIBLE PUNISHMENT OF THE DEFENDANT IS OF NO CONCERN TO THE JURY AND SHOULD NOT, IN ANY SENSE, ENTER INTO OR INFLUENCE YOUR DELIBERATIONS. THE DUTY OF IMPOSING A SENTENCE ON ANY CONVICTED DEFENDANT RESTS EXCLUSIVELY UPON THE COURT -- THAT IS, UPON ME. YOUR FUNCTION IS TO WEIGH THE EVIDENCE IN THE CASE AND TO DETERMINE WHETHER OR NOT THE DEFENDANT IS GUILTY BEYOND A

REASONABLE DOUBT, SOLELY ON THE BASIS OF SUCH EVIDENCE. UNDER YOUR OATH AS JURORS, YOU CANNOT ALLOW A CONSIDERATION OF THE PUNISHMENT WHICH MAY BE IMPOSED UPON THE DEFENDANT, IF HE IS CONVICTED, TO INFLUENCE YOUR VOTE IN ANY WAY, OR, IN ANY SENSE, TO ENTER INTO YOUR DELIBERATIONS.

INDICTMENT IS NOT EVIDENCE

NOW, WITH THESE PRELIMINARY INSTRUCTIONS IN MIND, LET US TURN TO THE CHARGE AGAINST THE DEFENDANT, AS CONTAINED IN THE INDICTMENT. I REMIND YOU THAT AN INDICTMENT ITSELF IS NOT EVIDENCE. IT MERELY DESCRIBES THE CHARGE MADE AGAINST THE DEFENDANT. IT IS AN ACCUSATION. IT MAY NOT BE CONSIDERED BY YOU AS ANY EVIDENCE OR PROOF OF THE GUILT OF THE DEFENDANT. ONLY THE EVIDENCE OR THE LACK OF EVIDENCE PRESENTED HERE AT TRIAL BEFORE YOU IS RELEVANT TO THAT ISSUE.

THE INDICTMENT

THE DEFENDANT, DANIEL KARRON, IS FORMALLY CHARGED IN AN INDICTMENT WHICH CONTAINS ONE COUNT. BEFORE YOU BEGIN YOUR DELIBERATIONS, YOU WILL BE PROVIDED WITH A COPY OF THE INDICTMENT CONTAINING THE CHARGE.

COUNT ONE OF THE INDICTMENT CHARGES THAT FROM AT LEAST IN OR ABOUT OCTOBER 2001, UP THROUGH AND INCLUDING IN OR ABOUT JUNE 2003, DANIEL B. KARRON, THE PRESIDENT AND CHIEF TECHNICAL OFFICER OF A

COMPANY CALLED COMPUTER AIDED SURGERY, INC. (CASI), INTENTIONALLY MISAPPLIED $5,000 AND MORE IN THE CARE, CUSTODY AND CONTROL OF CASI, WHILE IT WAS THE BENEFICIARY OF A FEDERAL GRANT OF MORE THAN $10,000 A YEAR FROM THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, A FEDERAL ENTITY.

COUNT ONE

THE INDICTMENT READS AS FOLLOWS:

[THE COURT WILL READ THE INDICTMENT]

TITLE 18, UNITED STATES CODE, SECTION 666, READS, IN PERTINENT PART, AS FOLLOWS:

§ 666. Theft or bribery concerning programs receiving Federal funds

(a) Whoever, if the circumstance described in subsection (b) of this section exists –

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that –

(i) is valued at $5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency;

– is guilty of a crime.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

COUNT ONE: THEFT OR MISAPPLICATION CONCERNING PROGRAMS RECEIVING FEDERAL FUNDS
GENERAL INSTRUCTIONS (18 U.S.C. § 666)

IN ORDER TO SUSTAIN ITS BURDEN OF PROOF WITH RESPECT TO THE ALLEGATION IN COUNT ONE, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT THE FOLLOWING FIVE ELEMENTS:

FIRST, AT THE TIME ALLEGED IN THE INDICTMENT, THE DEFENDANT WAS AN AGENT OF COMPUTER AIDED SURGERY, INC., OR CASI;

SECOND, IN A ONE-YEAR PERIOD, CASI RECEIVED A FEDERAL GRANT IN EXCESS OF $10,000;

THIRD, DURING THAT ONE YEAR PERIOD, THE DEFENDANT WITHOUT AUTHORITY INTENTIONALLY MISAPPLIED THE GRANT MONEY;

FOURTH, THE MISAPPLIED GRANT MONEY WAS UNDER THE CARE, CUSTODY, OR CONTROL OF, CASI;

FIFTH, THE VALUE OF THE MONEY INTENTIONALLY MISAPPLIED BY THE DEFENDANT WAS AT LEAST $5,000.

LET US NOW SEPARATELY CONSIDER THESE FIVE ELEMENTS.

FIRST ELEMENT: DEFENDANT WAS AN AGENT OF CASI

THE FIRST ELEMENT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT IS THAT AT THE TIME ALLEGED IN THE INDICTMENT, THE DEFENDANT WAS AN AGENT OF CASI.

THE TERM "AGENT" MEANS A PERSON AUTHORIZED TO ACT ON BEHALF OF AN ORGANIZATION. EMPLOYEES, PARTNERS, DIRECTORS, OFFICERS, MANAGERS, AND REPRESENTATIVES ARE ALL AGENTS OF AN ORGANIZATION.

SECOND ELEMENT: CASI RECEIVED FEDERAL FUNDS

THE SECOND ELEMENT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT IS THAT IN A ONE-YEAR PERIOD, CASI RECEIVED FEDERAL BENEFITS IN EXCESS OF $10,000.

TO PROVE THIS ELEMENT, THE GOVERNMENT MUST ESTABLISH THAT CASI RECEIVED, DURING A ONE-YEAR PERIOD, BENEFITS IN EXCESS OF $10,000 UNDER A FEDERAL PROGRAM INVOLVING A GRANT, CONTRACT, SUBSIDY, LOAN, GUARANTEE, INSURANCE, OR SOME OTHER FORM OF FEDERAL ASSISTANCE.

THE ONE-YEAR PERIOD MUST BEGIN NO MORE THAN 12 MONTHS BEFORE THE DEFENDANT COMMITTED THE ACTS CHARGED IN THE INDICTMENT AND MUST END NO MORE THAN 12 MONTHS AFTER THOSE ACTS. YOU CAN CHOOSE ANY PERIOD OF FEDERAL FUNDING YOU WANT AS LONG AS YOU UNANIMOUSLY FIND THAT THE ACTS OF MISAPPLICATION CHARGED IN THE INDICTMENT OCCURRED IN THAT ONE YEAR PERIOD.

THIRD ELEMENT: INTENTIONAL MISAPPLICATION OF MONEY

THE THIRD ELEMENT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT IS THAT THE DEFENDANT WITHOUT AUTHORITY INTENTIONALLY MISAPPLIED MONEY. TO INTENTIONALLY MISAPPLY MONEY

MEANS TO USE MONEY UNDER THE CONTROL OF CASI KNOWING THAT SUCH USE IS UNAUTHORIZED OR UNJUSTIFIABLE OR WRONGFUL. INTENTIONAL MISAPPLICATION INCLUDES THE WRONGFUL USE OF THE MONEY FOR A PURPOSE THE DEFENDANT KNEW WAS UNAUTHORIZED, EVEN IF SUCH USE BENEFITED CASI IN SOME WAY.

IN THIS CASE, TO INTENTIONALLY MISAPPLY MONEY MEANS TO INTENTIONALLY APPLY THE GRANT MONEY RECEIVED BY CASI IN A MANNER WHICH THE DEFENDANT KNEW WAS UNAUTHORIZED UNDER THE TERMS AND CONDITIONS OF THE GRANT. MISAPPLICATION OF MONEY, HOWEVER, DOES NOT APPLY TO BONA FIDE SALARY, WAGES, FRINGE BENEFITS, OR OTHER COMPENSATION PAID, OR EXPENSES PAID OR REIMBURSED, IN THE USUAL COURSE OF BUSINESS.

AS I SAID, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ACTED INTENTIONALLY IN MISAPPLYING GRANT MONEY. TO FIND THAT THE DEFENDANT ACTED INTENTIONALLY, YOU MUST BE SATISFIED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ACTED DELIBERATELY AND PURPOSEFULLY. THAT IS, THE DEFENDANT'S MISAPPLICATION MUST HAVE BEEN THE PRODUCT OF THE DEFENDANT'S CONSCIOUS OBJECTIVE TO SPEND THE MONEY FOR AN UNAUTHORIZED PURPOSE, RATHER THAN THE PRODUCT OF A MISTAKE OR ACCIDENT OR SOME OTHER INNOCENT REASON.

FOURTH ELEMENT: MISAPPLIED GRANT MONEY UNDER THE CONTROL OF CASI

THE FOURTH ELEMENT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT IS THAT THE GRANT MONEY THAT WAS INTENTIONALLY MISAPPLIED WAS IN THE CARE, CUSTODY, OR CONTROL OF, CASI. ALTHOUGH THE WORDS "CARE," "CUSTODY," AND "CONTROL" HAVE SLIGHTLY DIFFERENT MEANINGS, FOR THE PURPOSES OF THIS ELEMENT, THEY EXPRESS A SIMILAR IDEA. ALL THAT IS NECESSARY IS THAT CASI HAD CONTROL OVER AND RESPONSIBILITY FOR THE GRANT MONEY.

FIFTH ELEMENT: VALUE OF MISAPPLIED GRANT MONEY

THE FIFTH AND FINAL ELEMENT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT IS THAT THE VALUE OF THE INTENTIONALLY MISAPPLIED MONEY WAS AT LEAST $5,000.

THE WORD "VALUE" MEANS FACE, PAR OR MARKET VALUE, OR COST PRICE, EITHER WHOLESALE OR RETAIL, WHICHEVER IS GREATER. "MARKET VALUE" MEANS THE PRICE A WILLING BUYER WOULD PAY A WILLING SELLER AT THE TIME THE PROPERTY WAS INTENTIONALLY MISAPPLIED.

YOU MAY AGGREGATE OR ADD UP THE VALUE OF MONEY INTENTIONALLY MISAPPLIED FROM A SERIES OF ACTS BY THE DEFENDANT TO MEET THIS $5,000 REQUIREMENT, SO LONG AS YOU FIND THAT EACH ACT OF INTENTIONAL MISAPPLICATION WAS PART OF A SINGLE SCHEME BY THE DEFENDANT TO MISAPPLY GRANT MONEY UNDER THE CARE, CUSTODY, AND CONTROL OF CASI.

THE GOVERNMENT DOES NOT HAVE TO PROVE THAT THE PARTICULAR MONEY MISAPPLIED BY THE DEFENDANT WAS THE MONEY RECEIVED BY CASI AS A FEDERAL GRANT. IN OTHER WORDS, IT IS NOT NECESSARY FOR THE GOVERNMENT TO SHOW THAT THE INTENTIONALLY MISAPPLIED MONEY WAS TRACEABLE TO THE ACTUAL FEDERAL GRANT RECEIVED BY THE ORGANIZATION. THUS, IF THE GOVERNMENT ESTABLISHES THAT CASI RECEIVED MORE THAN $10,000 IN FEDERAL AID DURING A ONE-YEAR PERIOD, AND THAT, DURING THAT PERIOD, THE DEFENDANT MISAPPLIED FUNDS VALUED AT MORE THAN $5,000 UNDER THE CARE, CUSTODY, AND CONTROL OF CASI, THE GOVERNMENT WILL HAVE SATISFIED ITS BURDEN WITH RESPECT TO THIS ELEMENT. MONEY IS FUNGIBLE, AND THE GOVERNMENT NEED NOT TRACE THE $5,000 OR MORE ALLEGED TO BE INTENTIONALLY MISAPPLIED BACK TO THE FEDERAL GRANT.

VENUE

IN ADDITION TO THE ELEMENTS OF THE OFFENSES THAT I HAVE EXPLAINED, YOU MUST CONSIDER WHETHER ANY ACT IN FURTHERANCE OF THE CRIME CHARGED IN THE INDICTMENT OCCURRED WITHIN THE SOUTHERN DISTRICT OF NEW YORK. AS I HAVE INSTRUCTED YOU, THE SOUTHERN DISTRICT OF NEW YORK INCLUDES MANHATTAN AND THE BRONX.

I SHOULD NOTE THAT ON THIS ISSUE -- AND THIS ISSUE ALONE -- THE GOVERNMENT NEED NOT PROVE VENUE BEYOND A REASONABLE DOUBT, BUT ONLY BY A MERE PREPONDERANCE OF THE EVIDENCE. THUS, THE

GOVERNMENT HAS SATISFIED ITS VENUE OBLIGATIONS IF YOU CONCLUDE THAT IT IS MORE LIKELY THAN NOT THAT ANY ACT IN FURTHERANCE OF THE CRIME CHARGED OCCURRED IN THE SOUTHERN DISTRICT OF NEW YORK.

PREPARATION OF WITNESSES

YOU HAVE HEARD EVIDENCE DURING THE TRIAL THAT WITNESSES HAVE DISCUSSED THE FACTS OF THE CASE AND THEIR TESTIMONY WITH THE LAWYERS BEFORE THE WITNESSES APPEARED IN COURT.

ALTHOUGH YOU MAY CONSIDER THAT FACT WHEN YOU ARE EVALUATING A WITNESS'S CREDIBILITY, I SHOULD TELL YOU THAT THERE IS NOTHING EITHER UNUSUAL OR IMPROPER ABOUT A WITNESS MEETING WITH LAWYERS BEFORE TESTIFYING SO THAT THE WITNESS CAN BE AWARE OF THE SUBJECTS HE OR SHE WILL BE QUESTIONED ABOUT, FOCUS ON THOSE SUBJECTS AND HAVE THE OPPORTUNITY TO REVIEW RELEVANT EXHIBITS BEFORE BEING QUESTIONED ABOUT THEM. SUCH CONSULTATION HELPS CONSERVE YOUR TIME AND THE COURT'S TIME. IN FACT, IT WOULD BE UNUSUAL FOR A LAWYER TO CALL A WITNESS WITHOUT SUCH CONSULTATION.

AGAIN, THE WEIGHT YOU GIVE TO THE FACT OR THE NATURE OF THE WITNESS'S PREPARATION FOR HIS OR HER TESTIMONY AND WHAT INFERENCES YOU DRAW FROM SUCH PREPARATION ARE MATTERS COMPLETELY WITHIN YOUR DISCRETION.

EXPERT TESTIMONY

YOU HAVE HEARD TESTIMONY FROM WHAT WE CALL AN EXPERT WITNESS. AN EXPERT WITNESS IS A PERSON WHO BY EDUCATION OR EXPERIENCE HAS ACQUIRED LEARNING OR EXPERIENCE IN A SCIENCE OR A SPECIALIZED AREA OF KNOWLEDGE. SUCH WITNESSES ARE PERMITTED TO GIVE THEIR OPINIONS AS TO RELEVANT MATTERS IN WHICH THEY PROFESS TO BE EXPERT AND GIVE THEIR REASONS FOR THEIR OPINIONS. EXPERT TESTIMONY IS PRESENTED TO YOU ON THE THEORY THAT SOMEONE WHO IS EXPERIENCED IN THE FIELD CAN ASSIST YOU IN UNDERSTANDING THE EVIDENCE OR IN REACHING AN INDEPENDENT DECISION ON THE FACTS.

NOW, YOUR ROLE IN JUDGING CREDIBILITY APPLIES TO EXPERTS AS WELL AS TO OTHER WITNESSES. YOU SHOULD CONSIDER THE EXPERT OPINIONS THAT WERE RECEIVED IN EVIDENCE IN THIS CASE AND GIVE THEM AS MUCH OR AS LITTLE WEIGHT AS YOU THINK THEY DESERVE. IF YOU SHOULD DECIDE THAT THE OPINION OF AN EXPERT WAS NOT BASED ON SUFFICIENT EDUCATION OR EXPERIENCE OR ON SUFFICIENT DATA, OR IF YOU SHOULD CONCLUDE THAT THE TRUSTWORTHINESS OR CREDIBILITY OF AN EXPERT IS QUESTIONABLE FOR ANY REASON, OR IF THE OPINION OF THE EXPERT WAS OUTWEIGHED, IN YOUR JUDGMENT, BY OTHER EVIDENCE IN THE CASE, THEN YOU MIGHT DISREGARD THE OPINION OF THE EXPERT ENTIRELY OR IN PART.

ON THE OTHER HAND, IF YOU FIND THE OPINION OF AN EXPERT IS BASED ON SUFFICIENT DATA, EDUCATION AND EXPERIENCE, AND THE OTHER

EVIDENCE DOES NOT GIVE YOU REASON TO DOUBT HIS CONCLUSIONS, YOU WOULD BE JUSTIFIED IN PLACING GREAT RELIANCE ON HIS TESTIMONY.

PERSONS NOT ON TRIAL

IF YOU CONCLUDE THAT OTHER PERSONS MAY HAVE BEEN INVOLVED IN CRIMINAL ACTS CHARGED IN THE INDICTMENT, YOU MAY NOT DRAW ANY INFERENCE, FAVORABLE OR UNFAVORABLE, TOWARD EITHER THE GOVERNMENT OR THE DEFENDANT FROM THE FACT THAT THOSE PERSONS ARE NOT NAMED AS DEFENDANTS IN THIS INDICTMENT OR ARE NOT PRESENT AT THIS TRIAL.

IN ADDITION, YOU SHOULD NOT SPECULATE AS TO THE REASONS THAT INDIVIDUALS OTHER THAN THE DEFENDANT ARE NOT DEFENDANTS IN THIS TRIAL. THOSE MATTERS ARE WHOLLY OUTSIDE YOUR CONCERN AND HAVE NO BEARING ON YOUR FUNCTION AS JURORS IN THIS TRIAL.

UNCALLED WITNESS - EQUALLY AVAILABLE TO BOTH SIDES

BOTH THE GOVERNMENT AND THE DEFENDANT HAVE THE SAME POWER TO SUBPOENA WITNESSES TO TESTIFY ON THEIR BEHALF. IF A POTENTIAL WITNESS COULD HAVE BEEN CALLED BY THE GOVERNMENT OR BY THE DEFENDANT AND NEITHER PARTY CALLED THE WITNESS, THEN YOU MAY DRAW THE CONCLUSION THAT THE TESTIMONY OF THE ABSENT WITNESS MIGHT HAVE

BEEN UNFAVORABLE TO THE GOVERNMENT OR TO THE DEFENDANT OR TO BOTH PARTIES.

ON THE OTHER HAND, IT IS EQUALLY WITHIN YOUR PROVINCE TO DRAW NO INFERENCE AT ALL FROM THE FAILURE A PARTY TO CALL A WITNESS.

YOU SHOULD REMEMBER THAT THERE IS NO DUTY ON EITHER SIDE TO CALL A WITNESS WHOSE TESTIMONY WOULD BE MERELY CUMULATIVE OF TESTIMONY ALREADY IN EVIDENCE, OR WHO WOULD MERELY PROVIDE ADDITIONAL TESTIMONY TO FACTS ALREADY IN EVIDENCE.

PARTICULAR INVESTIGATIVE TECHNIQUES NOT REQUIRED

YOU HAVE HEARD REFERENCE, IN THE TESTIMONY AND IN THE ARGUMENTS OF DEFENSE COUNSEL IN THIS CASE, ABOUT THE FACT THAT CERTAIN INVESTIGATIVE TECHNIQUES WERE NOT USED BY LAW ENFORCEMENT AUTHORITIES. THERE IS NO LEGAL REQUIREMENT THAT THE GOVERNMENT PROVE ITS CASE THROUGH ANY PARTICULAR MEANS. WHILE YOU ARE TO CAREFULLY CONSIDER THE EVIDENCE PRESENTED BY THE GOVERNMENT, YOU NEED NOT SPECULATE AS TO WHY THEY USED THE TECHNIQUES THEY DID, OR WHY THEY DID NOT USE OTHER TECHNIQUES. THE GOVERNMENT IS NOT ON TRIAL, AND LAW ENFORCEMENT TECHNIQUES ARE NOT YOUR CONCERN.

YOUR CONCERN IS TO DETERMINE WHETHER OR NOT, BASED ON THE EVIDENCE OR LACK OF EVIDENCE, THE GUILT OF THE DEFENDANT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT.

EVIDENCE OF GOOD CHARACTER

THERE IS TESTIMONY IN THIS CASE OF THE PREVIOUS GOOD CHARACTER OF THE DEFENDANT. THIS TESTIMONY IS NOT TO BE TAKEN BY YOU AS THE WITNESSES' OPINION AS TO WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY. THAT QUESTION IS FOR YOU ALONE TO DETERMINE. INDEED, SOME OF THE CHARACTER WITNESSES TESTIFIED THAT THEY HAD NO DIRECT, PERSONAL KNOWLEDGE OF THE FACTS AND CIRCUMSTANCES WHICH WERE THE FOCUS OF THIS CASE. YOU SHOULD CONSIDER EVIDENCE OF GOOD CHARACTER TOGETHER WITH ALL OTHER FACTS AND ALL THE OTHER EVIDENCE IN DETERMINING WHETHER THE PROSECUTION HAS SUSTAINED ITS BURDEN OF PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. EVIDENCE OF GOOD CHARACTER MAY IN ITSELF CREATE A REASONABLE DOUBT WHERE WITHOUT SUCH EVIDENCE NO REASONABLE DOUBT EXISTS. BUT IF, FROM ALL THE EVIDENCE, YOU ARE SATISFIED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY, A SHOWING THAT THE DEFENDANT PREVIOUSLY ENJOYED A REPUTATION OF GOOD CHARACTER DOES NOT JUSTIFY OR EXCUSE THE OFFENSE, AND YOU SHOULD NOT ACQUIT THE DEFENDANT MERELY BECAUSE YOU BELIEVE THAT HE HAD BEEN A PERSON OF GOOD REPUTE.

CHARTS AND SUMMARIES

SOME OF THE EXHIBITS THAT WERE ADMITTED INTO EVIDENCE WERE CHARTS. THESE CHARTS WERE INTRODUCED BASICALLY AS SUMMARIES. THEY

ARE NOT DIRECT EVIDENCE. THEY ARE SUMMARIES OF THE EVIDENCE, AND ARE ADMITTED AS AIDS TO YOU. THEY ARE NOT IN AND OF THEMSELVES ANY EVIDENCE. THEY ARE INTENDED ONLY TO BE OF ASSISTANCE TO YOU IN CONSIDERING THE EVIDENCE DURING YOUR DELIBERATIONS.

IN PRESENTING THE EVIDENCE WHICH YOU HAVE HEARD, IT IS CLEARLY EASIER AND MORE CONVENIENT TO UTILIZE SUMMARY CHARTS THAN TO PLACE ALL OF THE RELEVANT DOCUMENTS IN FRONT OF YOU. IT IS UP TO YOU TO DECIDE WHETHER THOSE CHARTS FAIRLY AND CORRECTLY PRESENT THE INFORMATION IN THE TESTIMONY AND THE DOCUMENTS ADMITTED IN EVIDENCE. THE CHARTS ARE NOT TO BE CONSIDERED BY YOU AS DIRECT PROOF OF ANYTHING. THEY ARE MERELY GRAPHIC DEMONSTRATIONS OF WHAT THE UNDERLYING TESTIMONY AND DOCUMENTS ARE.

TO THE EXTENT THAT THE CHARTS CONFORM WITH WHAT YOU DETERMINE THE UNDERLYING EVIDENCE TO BE, YOU SHOULD ACCEPT THEM. BUT ONE WAY OR THE OTHER, REALIZE THAT THE CHART IS NOT IN AND OF ITSELF DIRECT EVIDENCE. THEY ARE MERELY VISUAL AIDS. THEY ARE NOTHING MORE.

RIGHT TO SEE EXHIBITS AND HEAR TESTIMONY; COMMUNICATIONS WITH COURT

YOU ARE ABOUT TO GO INTO THE JURY ROOM AND BEGIN YOUR DELIBERATIONS. IF DURING THOSE DELIBERATIONS YOU WANT TO SEE OR HEAR ANY OF THE EXHIBITS, THEY WILL BE SENT TO YOU IN THE JURY ROOM

UPON REQUEST. IF YOU WANT ANY OF THE TESTIMONY READ, THAT CAN ALSO BE DONE. BUT PLEASE REMEMBER THAT IT IS NOT ALWAYS EASY TO LOCATE WHAT YOU MIGHT WANT, SO TRY TO BE AS SPECIFIC AS YOU POSSIBLY CAN IN REQUESTING EXHIBITS OR PORTIONS OF THE TESTIMONY WHICH YOU MAY WANT.

YOUR REQUESTS FOR EXHIBITS OR TESTIMONY -- IN FACT ANY COMMUNICATION WITH THE COURT -- SHOULD BE MADE TO ME IN WRITING, SIGNED BY YOUR FOREPERSON, AND GIVEN TO ONE OF THE MARSHALS. I WILL RESPOND TO ANY QUESTIONS OR REQUESTS YOU HAVE AS PROMPTLY AS POSSIBLE EITHER IN WRITING OR BY HAVING YOU RETURN TO THE COURTROOM SO I CAN SPEAK TO YOU IN PERSON. IN ANY EVENT, DO NOT, IN ANY NOTE OR OTHERWISE, TELL ME OR ANYONE ELSE HOW YOU OR ANY GROUP OF YOU HAVE VOTED OR PROPOSE TO VOTE ON THE ISSUE OF THE DEFENDANT'S GUILT UNTIL AFTER A UNANIMOUS VERDICT IS REACHED. IN OTHER WORDS, DO NOT TELL ME OR ANYONE ELSE WHAT YOUR NUMERICAL DIVISION IS -- HOW MANY THINK ONE WAY AND HOW MANY THINK ANOTHER -- IF YOU ARE DIVIDED AT ANY POINT ON HOW TO DECIDE THE CASE BECAUSE UNTIL YOU HAVE REACHED A VERDICT, YOU HAVE NO VERDICT.

SUBMITTING THE INDICTMENT

I AM SENDING A COPY OF THE INDICTMENT INTO THE JURY ROOM FOR YOU TO HAVE DURING YOUR DELIBERATIONS. YOU MAY USE IT TO READ THE CRIME WITH WHICH THE DEFENDANT IS CHARGED WITH COMMITTING. YOU

ARE REMINDED, HOWEVER, THAT AN INDICTMENT IS MERELY AN ACCUSATION AND IS NOT TO BE USED BY YOU AS ANY PROOF OF THE CONDUCT CHARGED.

DUTY TO CONSULT AND NEED FOR UNANIMITY

AS ALREADY EXPLAINED IN THESE INSTRUCTIONS, THE GOVERNMENT, TO PREVAIL ON THE CHARGE IN THE INDICTMENT, MUST PROVE THE ESSENTIAL ELEMENTS OF THAT COUNT IN THE INDICTMENT BEYOND A REASONABLE DOUBT. IF IT SUCCEEDS, YOUR VERDICT SHOULD BE GUILTY AS TO THAT COUNT; IF IT FAILS, IT SHOULD BE NOT GUILTY AS TO THAT COUNT. TO REPORT A VERDICT, YOUR VOTE MUST BE UNANIMOUS.

YOUR FUNCTION IS TO WEIGH THE EVIDENCE IN THE CASE AND DETERMINE WHETHER OR NOT THE DEFENDANT IS GUILTY OF THE COUNT IN THE INDICTMENT, SOLELY UPON THE BASIS OF SUCH EVIDENCE.

VERDICT FORM

NOW, TO AID YOU IN YOUR DELIBERATIONS, AND SO THAT A PROPER RECORD CAN BE MADE OF YOUR VERDICT, THE COURT HAS PREPARED A FORM OF VERDICT. I AM ASKING THAT THE VERDICT FORM BE SIGNED BY THE FOREPERSON AND BE FILED WITH THE COURT. WHEN YOU HAVE UNANIMOUSLY AGREED ON YOUR VERDICT, THEN THE FOREPERSON WILL FILL IT IN AND SIGN IT, AND YOU TELL THE MARSHAL YOU HAVE REACHED A VERDICT. THEN YOU WILL BE ASKED TO COME BACK INTO OPEN COURT AND THE CLERK WILL ASK WHETHER YOUR VERDICT IS UNANIMOUS.

[DISTRIBUTE AND READ VERDICT FORM]

NOW, EACH JUROR IS ENTITLED TO HIS OR HER OPINION; EACH SHOULD, HOWEVER, EXCHANGE VIEWS WITH HIS OR HER FELLOW JURORS. THAT IS THE VERY PURPOSE OF JURY DELIBERATION -- TO DISCUSS AND CONSIDER THE EVIDENCE; TO CONSIDER THE ARGUMENTS OF FELLOW JURORS; TO PRESENT YOUR INDIVIDUAL VIEWS; TO CONSULT WITH ONE ANOTHER; AND TO REACH AN AGREEMENT BASED SOLELY AND ENTIRELY ON THE EVIDENCE OR THE LACK OF EVIDENCE -- IF YOU CAN DO SO WITHOUT VIOLATION TO YOUR OWN INDIVIDUAL JUDGMENT.

EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, AFTER CONSIDERATION WITH YOUR FELLOW JURORS OF THE EVIDENCE IN THE CASE.

BUT YOU SHOULD NOT HESITATE TO CHANGE AN OPINION WHICH, AFTER DISCUSSION WITH YOUR FELLOW JURORS, APPEARS INCORRECT.

HOWEVER, IF, AFTER CAREFULLY CONSIDERING ALL THE EVIDENCE AND THE ARGUMENTS OF YOUR FELLOW JURORS, YOU HOLD A CONSCIENTIOUS VIEW THAT DIFFERS FROM THE OTHERS, YOU ARE NOT TO CHANGE YOUR POSITION SIMPLY BECAUSE YOU ARE OUTNUMBERED. IF THEY DO NOT CONVINCE YOU THAT YOUR POSITION IS INCORRECT, YOU SHALL ADHERE TO YOUR POSITION REGARDLESS OF THE LATENESS OF THE HOUR OR ANY PERSONAL INCONVENIENCE IT MAY CAUSE YOU.

YOUR FINAL VOTE MUST REFLECT YOUR CONSCIENTIOUS BELIEF AS TO HOW THE ISSUES SHOULD BE DECIDED.

CONCLUSION -- CHARGE AS A WHOLE, DUTY TO CONSULT, SELECTION OF A FOREPERSON

NOW, I HAVE VIRTUALLY FINISHED WITH THE CHARGE AND MY INSTRUCTIONS TO YOU AND I WANT TO THANK YOU AGAIN FOR YOUR PATIENCE AND ATTENTIVENESS. I WILL SEND A COPY OF THE CHARGE IN TO YOU SO THAT YOU CAN USE IT DURING YOUR DELIBERATIONS. AGAIN, PLEASE REMEMBER THAT NO SINGLE PART OF THIS CHARGE IS TO BE CONSIDERED IN ISOLATION. YOU ARE NOT TO CONSIDER ANY ONE ASPECT OF THIS CHARGE OUT OF CONTEXT. THE ENTIRE CHARGE IS TO BE CONSIDERED AS AN INTEGRATED STATEMENT AND TO BE TAKEN TOGETHER.

NOW, I SAY THIS NOT BECAUSE I THINK IT IS NECESSARY BUT IT IS THE TRADITION OF THIS COURT. I ADVISE THE JURORS TO BE POLITE AND RESPECTFUL TO EACH OTHER AS I AM SURE YOU WILL BE IN THE COURSE OF YOUR DELIBERATIONS SO THAT EACH JUROR MAY HAVE HIS OR HER POSITION MADE CLEAR TO ALL THE OTHERS.

THE FOREPERSON HAS NO GREATER AUTHORITY THAN ANY OTHER JUROR BUT WILL BE RESPONSIBLE FOR SIGNING ALL COMMUNICATIONS TO THE COURT AND FOR HANDING THEM TO THE MARSHAL DURING DELIBERATIONS. YOU SHOULD ELECT ONE PERSON TO ACT AS FOREPERSON AT THE OUTSET OF YOUR DELIBERATIONS. I SOMETIMES SUGGEST THAT IT IS EASIER TO ELECT JUROR NO.

1 – THAT IS, MS. YOUNG, BUT SOMETIMES JUROR 1 DOESN'T WANT TO ACT AS FOREPERSON, SO YOU ALL CAN ELECT WHOMEVER YOU WANT. THAT IS YOUR PREROGATIVE. THE MANNER IN WHICH THE JURY CONDUCTS ITS DELIBERATIONS, OF COURSE, IS COMPLETELY WITHIN YOUR DISCRETION. YOU MAY FOLLOW ANY PROCEDURE THAT YOU CHOOSE, PROVIDED THAT EACH JUROR IS PRESENTED WITH AMPLE OPPORTUNITY TO EXPRESS HIS OR HER VIEW. THAT WAY WHEN YOU DO REACH A VERDICT YOU WILL KNOW THAT IT IS A JUST ONE, MADE WITH THE FULL PARTICIPATION OF ALL THE JURORS AND THAT YOU HAVE FAITHFULLY DISCHARGED YOUR OATH. I REMIND YOU ONCE AGAIN THAT YOUR DUTY IS TO ACT WITHOUT FEAR OR FAVOR AND THAT YOU MUST DECIDE THE ISSUES ON TRIAL BASED SOLELY ON THE EVIDENCE AND MY INSTRUCTIONS ON THE LAW.

THANK YOU.

NOW I WILL HAVE TO ASK YOU TO REMAIN SEATED WHILE I CONFER WITH COUNSEL TO SEE IF I MISSED PART OF THE CHARGE.

[SWEAR THE MARSHAL.]

[JURY RETIRES]